

Introduced by Senator Figueroa

February 24, 2006

An act to add Section 632.2 to the Penal Code, relating to telephone records.

LEGISLATIVE COUNSEL'S DIGEST

SB 1665, as introduced, Figueroa. Telephone records: unauthorized procurement, selling or obtaining of telephone calling pattern records or lists.

(1) Existing law prohibits a telephone or telegraph corporation, with certain exceptions, from making available to any other person or corporation, without first obtaining a residential subscriber's consent in writing, the subscriber's personal calling patterns, including any listing of the telephone or other access numbers called by the subscriber.

Existing law pertaining to the protection of privacy, makes it a crime, punishable by fine or imprisonment or both, with certain exceptions, to wiretap, eavesdrop, or otherwise intercept telephone or telegraph communications without authorization.

This bill would make it a crime to knowingly procure, attempt to procure, solicit, or conspire with another person to procure, a telephone calling pattern record or list, as defined, of another person that is a resident of the state, without the written authorization of the customer to whom the record pertains, or by any fraudulent, deceptive, or false means procure a telephone calling pattern record or list. The bill would additionally make it a crime to knowingly sell, attempt to sell, offer to sell, or conspire to sell a telephone calling pattern record or list of another person that is a resident of the state, without the written authorization of the customer to whom the record pertains or to receive a telephone calling pattern record or list

knowing that it was obtained without the written authorization of the customer, or was obtained by fraudulent, deceptive, or false means. The bill would impose different criminal penalties based upon the number of telephone calling pattern records or lists were procured, obtained, or sold in violation of the bill's prohibitions. Because a violation of the bill's provisions would be a crime, this bill would impose a state-mandated local program by creating new crimes.

(2) Existing law authorizes a person who has been injured by a violation of the provisions for invasion of privacy, to bring an action against the person who committed the violation for the greater of \$5,000 or three times the amount of the actual damages sustained as a result of the violation, and for injunctive relief.

This bill would provide that for a violation of the above-described prohibitions on the procurement, obtaining, or selling of a telephone calling pattern record or list, the customer, as defined, may in addition to the existing remedies available to a person for violation of the penal provisions for invasion of privacy, may seek any equitable relief, including disgorgement of any unlawful monetary or other gain, that the court deems appropriate and reasonable attorney's fees and costs of suit. The bill would authorize a telecommunications service provider from which a telephone calling pattern record or list has been unlawfully acquired to bring an action seeking any equitable relief, including disgorgement of any unlawful monetary or other gain, that the court deems appropriate and reasonable attorney's fees and costs of suit.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Pursuant to federal law, every telecommunications carrier
- 4 has a duty to protect the confidentiality of proprietary

1 information of, and relating to, customers. Federal law requires a
2 telecommunications carrier to disclose customer proprietary
3 network information, upon affirmative written request by the
4 customer, to any person designated by the customer.

5 (b) State law prohibits a telephone corporation from making
6 available to any other person or corporation, a subscriber's
7 personal calling patterns, including any listing of the telephone or
8 other access numbers called by the subscriber, without first
9 obtaining the residential subscriber's consent. Other state law
10 requires that a provider of mobile telephony services provide
11 subscribers with a means by which to obtain reasonably current
12 and available information on the subscriber's service usage.

13 (c) Each year, telephone company service representatives
14 receive millions of calls from customers seeking to change
15 service plans, troubleshoot service problems, or simply to obtain
16 copies of past telephone service bills. Easy access to customer
17 service is critical to ensuring customer satisfaction and the ability
18 of telephone companies to respond to and resolve any customer
19 concerns.

20 (d) Telephone companies employ numerous techniques to
21 identify and authenticate customers to ensure that telephone
22 records are not disclosed to unauthorized third parties. However,
23 because the customer is not physically present to be identified,
24 the risk of fraud is present despite the reasonable security
25 measures employed by telephone companies to validate customer
26 identity.

27 (e) Some unscrupulous third parties have impersonated
28 customers to fraudulently and illegally obtain telephone records.
29 These third parties often provide nonpublic personal information
30 obtained from other than the telephone company, to authenticate
31 the identity of the customer, such as a social security number,
32 date of birth, and even mother's maiden name of the customer.
33 Sometimes these unscrupulous third parties impersonate law
34 enforcement to obtain information to respond to an "emergency."
35 These fraudulent acts are often referred to as "pretexting." In
36 some cases, rogue carrier employees have been found to violate
37 company rules by selling telephone records. All of these
38 activities are fraudulent and illegal.

39 (f) Recently, some third parties have offered telephone records
40 for sale online and recent news stories have suggested that

1 telephone companies are being defrauded regularly by these data
2 thieves. Customer telephone records are being offered for sale by
3 online data brokers and the means and methods employed by
4 these companies are not completely known. However, what is
5 clear, is that the tactics used by these companies to obtain private
6 customer records of telephone calls are illegal, since telephone
7 records are not for sale by telephone companies and they do not
8 knowingly release such records other than with the consent of a
9 customer who has properly identified themselves or as required
10 or permitted by law.

11 (g) The law should punish not only the third party that actually
12 procures the records or sells them, but also the person who
13 receives them because the telephone records are actually stolen
14 property.

15 (h) State law makes it illegal for any person to obtain financial
16 records by false pretenses. A customer's telephone records
17 deserve the same protection.

18 SEC. 2. Section 632.2 is added to the Penal Code, to read:

19 632.2. (a) For purposes of this section, the following terms
20 have the following meanings:

21 (1) "Customer" means the person that purchases or subscribes
22 to any product or service provided or billed by a
23 telecommunications service provider or in who's name the
24 service is listed.

25 (2) "Person" means an individual, business association,
26 partnership, limited partnership, corporation, limited liability
27 company, trust, estate, cooperative association, or other entity.

28 (3) "Procure" means to obtain by any means, whether
29 electronically, in writing or in oral form, with or without
30 consideration.

31 (4) "Telecommunications service provider" means a telephone
32 corporation as defined in Section 234 of the Public Utilities
33 Code, a provider of satellite telephone services, a provider of
34 commercially available interconnected mobile phone service that
35 provides access to the public switched telephone network
36 (PSTN) via mobile communication devices employing radiowave
37 technology to transmit calls, including cellular radiotelephone,
38 broadband Personal Communications Services (PCS), and digital
39 Specialized Mobile Radio (SMR), and a commercially available

1 provider of voice communication services utilizing voice over
2 Internet Protocol or any successor protocol.

3 (5) “Telephone calling pattern record or list” means any
4 document or record, including electronic records, of the
5 telephone or other access numbers called by any person, or
6 received by any person, whether the call was made from or to a
7 telephone connected to the public switched telephone network, a
8 cordless telephone, as defined in Section 632.6, a telephony
9 device operating over the Internet utilizing voice over Internet
10 protocol, a satellite telephone, or commercially available
11 interconnected mobile phone service that provides access to the
12 public switched telephone network via a mobile communication
13 device employing radiowave technology to transmit calls,
14 including cellular radiotelephone, broadband Personal
15 Communications Services, and digital Specialized Mobile Radio.

16 (b) No person shall:

17 (1) Knowingly procure, attempt to procure, solicit, or conspire
18 with another person to procure, a telephone calling pattern record
19 or list of any other person that is a resident of this state, without
20 the written authorization of the customer to whom the record
21 pertains, or by any fraudulent, deceptive, or false means procure
22 a telephone calling pattern record or list of another.

23 (2) Knowingly sell, attempt to sell, offer to sell, or conspire to
24 sell a telephone calling pattern record or list of any other person
25 that is a resident of this state, without the written authorization of
26 the customer to whom the record pertains.

27 (3) Receive a telephone calling pattern record or list of any
28 other person that is a resident of this state, knowing that the
29 record has been obtained without the written authorization of the
30 customer to whom the record pertains or was obtained by
31 fraudulent, deceptive, or false means.

32 (c) (1) Any person that violates subdivision (b) shall, for a
33 single offense involving not more than one telephone calling
34 pattern record or list, be punished by a fine not exceeding two
35 thousand five hundred dollars (\$2,500), or by imprisonment in
36 the county jail not exceeding one year, or by imprisonment in the
37 state prison not exceeding five years, or by both a fine and
38 imprisonment in the county jail or in the state prison. If the
39 person has previously been convicted of a violation of this

1 section, he or she is punishable pursuant to paragraphs (2) and
2 (3).

3 (2) Any person that violates subdivision (b) shall, for offenses
4 involving at least two and not more than 10 telephone calling
5 pattern records or lists, be punished by a fine not exceeding five
6 thousand dollars (\$5,000), or by imprisonment in the state prison
7 not exceeding 10 years, or by both a fine and imprisonment in the
8 state prison.

9 (3) Any person that violates subdivision (b) shall, for offenses
10 involving more than 10 telephone calling pattern records or lists,
11 be punished by a fine not exceeding ten thousand dollars
12 (\$10,000), or by imprisonment in the state prison not exceeding
13 20 years, or by both a fine and imprisonment in the state prison.

14 (d) Any personal information contained in a telephone calling
15 pattern record or list that is obtained in violation of subdivision
16 (b) shall be inadmissible as evidence in any judicial,
17 administrative, legislative, or other proceeding except when that
18 information is offered as proof in an action or prosecution for a
19 violation of this section.

20 (e) In addition to those civil remedies available pursuant to
21 Section 637.2, a customer whose telephone calling pattern record
22 or list is sold, procured, or acquired in violation of subdivision
23 (b), may seek both of the following:

24 (1) Reasonable attorney's fees and costs of suit.

25 (2) Any equitable relief, including disgorgement of any
26 unlawful monetary or other gain, that the court deems
27 appropriate.

28 (f) A telecommunications service provider from which a
29 telephone calling pattern record or list has been unlawfully
30 acquired in violation of subdivision (b), may seek both of the
31 following:

32 (1) Reasonable attorney's fees and costs of suit.

33 (2) Any equitable relief, including disgorgement of any
34 unlawful monetary or other gain, that the court deems
35 appropriate.

36 (g) Any civil action for violation of subdivision (b), brought
37 pursuant to Section 637.2 or subdivision (e) or (f), may be
38 commenced not later than two years after the date upon which
39 the claimant first discovered, or had a reasonable opportunity to
40 discover, the violation of subdivision (b).

(h) Nothing in this section prohibits the Attorney General, any district attorney, or any assistant, deputy, or investigator of the Attorney General or any district attorney, any officer of the California Highway Patrol, any chief of police, assistant chief of police, or police officer of a city or city and county, any sheriff, undersheriff, or deputy sheriff regularly employed and paid in that capacity by a county, police officer of the County of Los Angeles, or any person acting pursuant to the direction of one of these law enforcement officers acting within the scope of his or her authority, from obtaining a telephone calling pattern record or list in connection with the performance of the official duties of the law enforcement agency.

(i) This section does not prohibit a telecommunications service provider from obtaining, using, disclosing, or permitting access to a telephone calling pattern or record in any of the following circumstances:

(1) Pursuant to a lawfully issued and noticed subpoena or as otherwise authorized by law.

(2) Pursuant to the written consent of the consumer.

(3) When necessary incidental to the rendering of service to the customer, to protect the property rights of the provider of the service, or to protect customers and other telecommunications service providers from fraudulent, abusive, or unlawful use of, or subscription to, the service.

(4) When the telecommunications service provider reasonably believes that an emergency exists involving immediate danger of death or serious injury to any person, to a governmental entity responsible for responding to the emergency.

(5) When a telecommunications service provider would have a defense to an action pursuant to Section 2707 of Title 18 of the United States Code.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a

- 1 crime within the meaning of Section 6 of Article XIII B of the
- 2 California Constitution.

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